

**COPYRIGHT ROYALTY JUDGES**  
**The Library of Congress**

*In re*

**DISTRIBUTION OF CABLE ROYALTY  
FUNDS**

**DOCKET NO. 19-CRB-0010 CD  
(2018)**

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**ORDER GRANTING MOVING PARTIES' MOTION  
FOR PARTIAL DISTRIBUTION OF 2018 CABLE ROYALTIES**

On May 11, 2020, representatives of certain groups of claimants (Moving Parties)<sup>1</sup> filed with the Copyright Royalty Judges (Judges) a Motion for Partial Distribution of 2018 cable royalties deposited with the United States Copyright Office ([Motion](#)). Specifically, the Moving Parties seek a distribution of 40% of the royalties deposited by cable system operators for the compulsory license described in section 111, title 17, United States Code (Copyright Act).

The Judges published [notice](#) of the Motion in the Federal Register in accordance with section 801(b)(3)(C) of the Copyright Act seeking comment on the requested partial distribution.<sup>2</sup> The Judges received one [comment](#) on the proposal, from David Powell, a *pro se* claimant.<sup>3</sup> On August 10, 2020, the Moving Parties filed a Supplemental Memorandum Regarding the Allocation Phase Parties' Motions for Partial Distribution of 2018 Cable and Satellite Royalties ([Supplemental Memorandum](#)) in which they responded to Mr. Powell's comment.

For the reasons discussed below, the Judges **GRANT** the Motion.

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<sup>1</sup> The Moving Parties, which refer to themselves in the Motion as the Allocation Phase Parties are: Program Suppliers; Joint Sports Claimants; Public Television Claimants; Commercial Television Claimants Group; American Society of Composers, Authors and Publishers; Broadcast Music, Inc.; SESAC, Inc.; Canadian Claimants Group; Devotional Claimants; and National Public Radio.

<sup>2</sup> 85 Fed. Reg. 29753 (May 18, 2020).

<sup>3</sup> Although Mr. Powell identifies himself as *pro se*, he also states that "David Powell members has [sic] authorized and consented to representation in any [sic] all and [sic] these proceedings by the undersigned counsel as required by 37 CFR ss. 351.1(b)(4) [sic]." Powell Comment at 3. Since Mr. Powell signed the comment, the Judges presume that Mr. Powell is referring to himself as the "undersigned counsel." The CRB Rule governing representation, 37 CFR § 303.2, states: "Individual parties in proceedings before the Judges may represent themselves or be represented by an attorney. All other parties must be represented by an attorney.... The appearance of an attorney on behalf of any party constitutes a representation that the attorney is a member of the bar, in one or more states, in good standing." 37 CFR § 303.2. In light of the ambiguity of Mr. Powell's submission, the Judges hereby direct Mr. Powell, in all subsequent filings he makes with the CRB in the captioned proceeding, to either (1) identify himself as a *pro se* claimant, or (2) identify himself as an attorney who is authorized to represent others parties in this proceeding. To the extent Mr. Powell chooses the second option (*i.e.*, attorney), he must include a representation that he is a member, in good standing, of the bar in one or more states, or the District of Columbia, identify that state (or the District of Columbia), and include his bar member number.

## Statutory Authorization for Partial Distributions of Funds in Controversy

Section 801(b)(3)(C) of the Act grants the Judges authority to authorize partial distributions of deposited royalties on the motion of an interested claimant at any time after claims are filed. That subparagraph provides:

Notwithstanding section 804(b)(8), the Copyright Royalty Judges, at any time after the filing of claims under section 111, 119, or 1007, may, upon motion of one or more of the claimants and after publication in the Federal Register of a request for responses to the motion from interested claimants, make a partial distribution of such fees, if, based upon all responses received during the 30-day period beginning on the date of such publication, the Copyright Royalty Judges conclude that no claimant entitled to receive such fees has stated a reasonable objection to the partial distribution, and all such claimants-

- (i) agree to the partial distribution;
- (ii) sign an agreement obligating them to return any excess amounts to the extent necessary to comply with the final determination on the distribution of the fees made under subparagraph (B);
- (iii) file the agreement with the Copyright Royalty Judges; and
- (iv) agree that such funds are available for distribution.

17 U.S.C. § 801(b)(3)(C).

The deadline for filing claims for 2018 cable royalties has passed. The Moving Parties represent that they are willing to sign a repayment agreement and file it with the Judges. Motion at 2-3. The Moving Parties also represent that in prior proceedings the Judges have made partial distributions of 40% or more of deposited royalty funds and that the remaining funds on deposit in the current proceeding, along with each party's commitment to repay any excess funds, will be sufficient to resolve any remaining controversies. *See* Motion at 3-5.

As discussed above, however, one claimant, David Powell, filed a comment in which he appears to object to the partial distribution. Comments and or Objection to 2018 40% Satellite and Cable Partial Distribution of Royalty Funds (June 17, 2020). Although Mr. Powell states in his comment "[a]greed Yes W/ Settling Parties 40% Partial Distribution of Cable and Satellite..." he states elsewhere in his comment that he "has a reasonable objection to the requested Distribution..." Powell Comment at 1. Therefore, the Judges treat Mr. Powell's comment as an objection.

In their Supplemental Memorandum, the Moving Parties assert that

Mr. Powell fails to raise a reasonable objection to either [cable or satellite] requested partial distribution. Mr. Powell's comments are indecipherable, and fail to demonstrate even that Mr. Powell is entitled to a distribution of 2018 cable and satellite royalties at all, much less that the funds that are the subject of the parties' partial distribution requests are in controversy. Indeed, Mr. Powell—who has never been found to be entitled to any royalties collected pursuant to the cable and satellite compulsory licenses—has a long track record of filing meritless objections to partial distribution requests, of which this is merely the latest example.

*Id.* at 2.

After carefully reviewing Mr. Powell's comment, the Judges believe that, roughly, Mr. Powell contends the following:

- (1) He and certain other (unnamed) claimants that he contends he is authorized to represent have been involved in voluntary negotiations with respect to 2018 cable and satellite royalties;
- (2) Mr. Powell is proffering a new claimant category in Appendix A to his comment that includes certain *pro se* claimants whose works were performed in six program categories;
- (3) Certain *pro se* claimants were added to the cable and satellite repayment agreement and EFT forms;
- (4) The representative for the Music Claimants category overstates the number of claimants it purports to represent and many claimants that the Musical Claimants representative purports to represent do not receive royalties.

*See* Powell Comment at 1-2.

Assuming, without deciding, that Mr. Powell's contentions are correct, the Judges find that no single contention, nor any combination thereof, provides a reasonable objection for denying the requested partial distribution. Contentions (1) and (3) appear merely to assert that certain *pro se* claimants are participating in this proceeding. Neither contention supports a finding that such claimants have a right to any 2018 cable royalties, much less a portion that would preclude the Judges from ordering that 40% of available royalties be distributed to the Moving Parties. Contention (2), which appears to be a proffer of a new claimant category, is not relevant to the current motion. If Mr. Powell wishes to proffer a new claimant category, he may file a separate, standalone motion requesting that the Judges consider such a proffer. In Contention (4), Mr. Powell makes two allegations regarding the Music Claimants category representative.<sup>4</sup> Mr. Powell provides no argument why such contentions, even if true, should preclude the Judges from ordering a partial distribution to all Allocation Phase claimant categories. The Judges will not reject a reasonable and appropriate request for partial distribution based on the unsupported contentions of a single claimant. *See* Order Granting Motion for Partial Distribution, Docket No. 16-CRB-0020 CD (2015) (“[M]r. Powell’s objection, which is virtually incomprehensible, fails to rise to the level of being a reasonable objection to the partial distribution.”). Therefore, the Judges find that no party has raised a reasonable objection to the requested partial distribution.

In light of the Moving Parties' representation that they agree to comply with all stipulations regarding a partial distribution ordered pursuant to Section 801(b)(3)(C) of the Copyright Act, the Judges determine that distribution of 40% of the 2018 cable royalty funds to the Moving Parties is reasonable and appropriate. Therefore, the Judges **GRANT** the Motion.

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<sup>4</sup> Mr. Powell provides no evidence to support either contention (*i.e.*, (1) that the Music Claimants overstate the number of claimants they represent and (2) that many claimants Music Claimants represent do not receive royalties).

## **Order**

The Judges **ORDER** that 40% of the royalties held in the 2018 cable royalty fund be distributed to the Office of the Commissioner of Baseball, which has agreed to serve as the common agent for the distribution of royalties among individual Moving Parties pursuant to a confidential agreement reached among the Moving Parties. *See* Motion at 5.

The Copyright Office shall make the distribution **PROVIDED THAT** each of the parties receiving a share of these funds provides to the Judges, with a copy to the Copyright Office, a signed agreement in the form required by the Copyright Office stating that the recipient shall repay to the Copyright Office any overpayment that results from the distribution of these funds, together with interest according to the amount that would have accrued if the principal had remained in the fund. All pertinent information to effect the transfer of funds must be provided to the Licensing Division of the Copyright Office no later than September 10, 2020. The distribution shall take place on or after September 17, 2020.

**SO ORDERED.**

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Jesse M. Feder  
Chief Copyright Royalty Judge

Dated: August 20, 2020.